

SEARCH & SEIZURE

Bailey v. U.S., --- U.S. --- (2013)

Decided February 19, 2013

FACTS: On July 28, 2005, at about 2045, local officers obtained a search warrant for a handgun. The location of the search was a basement apartment in Wyandanch, New York. A CI had informed the officers that he saw a gun when he was there to buy drugs from a man called “Polo.” Detectives Sneider and Gorbecki conducted surveillance outside the location as other officers prepared to execute the search warrant. At about 2156, two men, Bailey and Middleton, left the gated area above the apartment and got into a car parked in the driveway. Both matched the general description provided for Polo. “There was no indication that the men were aware of the officers’ presence or had a knowledge of the impending search.” The officers ultimately followed, after informing the search team of their intent. Eventually, the warrant team did search the apartment.

The detective’s tailed Bailey’s car for about a mile, finally pulling the vehicle over in a parking lot. Both occupants were ordered out and frisked. They found no weapons, but did remove a ring of keys from Bailey’s pocket. Bailey agreed he lived at the suspect location although his OL gave an address in another city – the same city where the CI said Polo used to live. The passenger, Middleton, agreed they were coming from Bailey’s home as well. Both were handcuffed. Bailey asked why and was told “they were being detained incident to the execution of a search warrant at the home.” Bailey promptly denied living there or owning anything found there. Both men were transported back to the subject address, and Det. Gorbecki drove Bailey’s car. By the time they returned, the search warrant team had discovered a gun and drugs. Both men were arrested and Bailey’s keys were matched to the apartment.

Bailey was charged with possession with the intent to distribute cocaine, along with weapons charges since he was a convicted felon. Bailey moved for suppression of the key and the initial statements he made during the stop, arguing both stemmed from an unreasonable seizure. The District Court denied the motion to suppress, holding the detention lawful under Michigan v. Summers.¹ (In the alternative, it also justified the detention under Terry v. Ohio.²) Bailey was convicted, and appealed.

The U.S. Court of Appeals, Second Circuit, also agreed the detention was proper under Summers. Bailey requested certiorari and the U.S. Supreme Court granted review.

¹ 452 U.S. 692 (1981).

² 392 U.S. 1 (1968).

ISSUE: May occupants of an area being searched under a warrant be detained when they are stopped a substantial distance from the premises?

HOLDING: No

DISCUSSION: The Court noted that within the basic Fourth Amendment framework requiring probable cause, there was “some latitude for police to detain” where the intrusion was minimal compared to the safety interest of officers and others. In Summers, the Court allowed the detention of occupants on a subject premises during a search. The concept was extended in Muehler v. Mena³ to explain that “an officer’s authority to detain incident to a search is categorical; it does not depend on the ‘quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure.’” However, in Summers and later cases, “the occupants detained were found within or immediately outside a residence at the moment the police officers executed the search warrant.”

In this case, Bailey was almost a mile away from the house. The Court agreed that “an exception to the Fourth Amendment rule prohibiting detention absent probable cause must not diverge from its purpose and rational.”⁴ The court looked to the “three important law enforcement interests” that factored into the Summers decision: “officer safety, facilitating the completion of the search, and preventing flight.”

First, the Court looked to the need to minimize the risk of harm to the officers, agreeing that during a search for drugs, there was a risk that suspects might engage in “sudden violence or frantic efforts to conceal or destroy evidence.” As such, officers must “exercise unquestioned command of the situation,” by securing the location and detaining current occupants. In Muehler, the Court agreed that even when a person is not suspected of involvement, it was still proper to detain them for the duration of the search, even handcuff them. The Court agreed that even if the subject is away from the residence when the search begins, they might return, but it noted that by “taking routine precautions” and keeping people out, officers could maintain their safety within. Bailey had left and had no apparent intention to return and as such, he was at little risk. However, had he returned, he could have been detained.

In fact, the Court noted, there is always a risk that an occupant who is not present at the initiation of the search might come home, “whether he left five minutes or five hours earlier.” Others might arrive unexpectedly as well. “Were police to have the authority to

³ 544 U.S. 93 (2005).

⁴ Florida v. Royer, 460 U.S. 491 (1983).

detain those persons away from the premises, the authority to detain incident to the execution of a search warrant would reach beyond the rationale of ensuring the integrity of the search by detaining those who are in fact on the scene.” The Court agreed that being unable to detain persons who leave a location when they are out of sight of the house might cause an inconvenience and delay a potential arrest, but the Court noted that they could, if appropriate rely instead on Terry. The Court agreed that under the government’s position, officers would be justified in “detaining anyone in the neighborhood who could alert occupants that the police are outside, all without individualized suspicion of criminal activity or connection to the residence to be searched.”

The second interest was the ability to complete the search in an orderly fashion. Certainly if occupants are permitted to wander around outside, there is the potential for interference, as they could “hide or destroy evidence, seek to distract the officers, or simply get in the way.” However, those risks are not present when the occupant has already left. Had he returned, he could have been detained at that time. Bailey could have been of no assistance in the search, either, as by the time he was returned, the search team had discovered contraband.

The third interest is the interest in “preventing flight in the event that incriminating evidence is found.” The Court noted that the “concern over flight is not because of the danger of flight itself but because of the damage that potential flight can cause to the integrity of the search.” It does not, however, justify detaining individuals who are not in the immediate vicinity. Even if that detention could serve to “facilitate a later arrest,” the “mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment.”⁵

Looking to all three interests, the Court agreed that none justified extending the ability to detain an occupant beyond the immediate vicinity of the premises being searched, as this would “give officers too much discretion.” The Court noted that detaining an individual away from their home was an “additional level of intrusiveness” since a “public detention, even if merely incident to a search, will resemble a full-fledged arrest.” It will almost always lead to the subject being returned to the search location, which involves the “additional indignity of a compelled transfer back to the premises, giving all the appearances of an arrest.”

The court concluded that a “spatial constraint defined by the immediate vicinity of the premises to be searched is therefore required for detentions incident to the execution of a search warrant.” Bailey was detained “at a point beyond any reasonable

⁵ Mincey v. Arizona, 437 U.S. 385 (1978).

understanding of the immediate vicinity of the premises in question,” and as such, it did not require the Court to “further define the meaning of immediate vicinity.” The Court left it to later rulings, noting that factors to be considered include “the lawful limits of the premises, whether the occupant was within the line of sight of his dwelling, the ease of reentry from the occupants location, and other relevant factors.”

The Court concluded:

Because detention is justified by the interests in executing a safe and efficient search, the decision to detain must be acted upon at the scene of the search and not at a later time in a more remote place. If officers elect to defer the detention until the suspect or departing occupant leaves the immediate vicinity, the lawfulness of detention is controlled by other standards, including, of course, a brief stop for questioning based on reasonable suspicion under *Terry* or an arrest based on probable cause. A suspect’s particular actions in leaving the scene, including whether he appears to be armed or fleeing with the evidence sought, and any information the officers acquire from those who are conducting the search, including information that incriminating evidence has been discovered, will bear, of course, on the lawfulness of a later stop or detention.

The Court noted that the District Court had held that stopping Bailey was lawful under *Terry*. The Court reversed the federal appellate court’s decision, that the detention was justified under *Summers* and remanded the case for a determination if the stop and search was justified under *Terry*.

Full Text of Opinion: http://www.supremecourt.gov/opinions/12pdf/11-770_j4ek.pdf.